IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

CRP.No. 551 of 2007()

OS.73/1999 of PRL.SUB COURT,THALASSERY
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REVN. PETITIONER: PETITIONER/PLAINTIFF:

N.VASUMATHY,
RESIDING AT 'DREAM' HOUSE, MANANTHERI,
KUTHUPARAMBA.

BY ADV. SRI.K.P.ARAVINDAKSHAN
SRI.S.KRISHNA PRASAD (AYALUR)
SRI.EBY P.PAUL

RESPONDENTS: RESPONDENTS/DEFENDANTS:
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1. P.VALSARAJ,
HOLLOWAY ROAD, TELLICHERY.

2. PREMA, RESIDING AT -DO-

3. SREE NARAYANA GURUDAS, RESIDING AT -DO- -DO-

4. RADHAKRISHNAN, RESIDING AT -DO-

5. SOBHANA, RESIDING AT -DO-

6. KANAKARAJ, RESIDING AT -DO-

7. JAYARAJ, RESIDING AT -DO-

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN,J

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C.R.P.No.551 OF 2007

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Dated this the 14th day of June, 2007

ORDER

This revision petition is filed against the order of the Subordinate Judge, Thalassery, to set aside the Commissioner's report and to appoint a fresh commission to effect partition in terms of the preliminary decree. The present petitioner is a purchaser of 2/3rd share of the property and the remaining 1/3rd share belongs to the respondent. The respondent with their family are residing in the property which is allotted to them. The Commissioner went to the spot and divided it into two namely, plot A and plot B. Plot A was allotted to the share of the respondent having an area of 16.25 cents and plot B having an area of 40 cents more than what is set apart to share of the present revision petitioner. Admittedly the respondents are residing in the property in a house situated in the plot which is allotted to them. The grievance of the revision petitioner is to the effect that there is level difference between the plot A and

plot B and as the property alloted to the revision petitioner is lying on the sea shore there is every possibility of the sea eroding the property and therefore he will not be able to enjoy the property. It is also his contention that he cannot make a construction in view of the sea zone regulations. It is true that there is level difference between plot A and plot B. But it is the fact that the respondents are residing in the place which is allotted to them as also noted that if plot A is further divided it may cause disturbance to both the parties and therefore he has taken the view that the property at higher side be allotted to the one party and the property at lower level allotted to other party. The commissioner also assessed the land value at a rate of Rs.8,500/- per cent for the plot at a higher side and Rs.4,000/- at the lower level. So the commissioner has taken note of the situation and he is the person who had inspected property and had reported that division can be made as plots A and B and thereafter allotted the properties in that fashion. Now an attempt to revive everything again in a suit of 1999 will result in never ending process. After taking into consideration of the materials and evidence, I feel that the findings of the court

below need not be distributed by setting aside commissioner's plan and report. I find no grounds to interfere with the findings of the trial court.

The civil revision petition is dismissed.

M.N.KRISHNAN,JUDGE

dvs